UNITED
NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/604
29 June 1993

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 604

Case No. 599: SHARMA

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, President; Mr. Luis de Posadas Montero, Vice-President; Mr. Hubert Thierry;

Whereas at the request of Puran Chand Sharma, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, successively extended to 11 December 1990 and 31 May 1991, the time-limit for the filing of an application to the Tribunal;

Whereas, on 16 May 1991, the Applicant filed an application requesting the Tribunal to:

> "Find that the Respondent has violated Applicant's rights to fair treatment - an implicit term and condition of employment - in that Applicant has been denied the proper classification of his post; has been denied a proper job description; has been denied proper performance evaluation reports; and has been treated in a grossly unfair and discriminatory manner in that the Administration inserted a false schedule purporting to reflect the percentages of the major duties and responsibilities attached to the post in question as the second page in the classification request form attached ...
>
> 2. Find that Applicant's reassignment effective 3 December 1984, as an Administrative Assistant violated his rights and the principles underlying the Tribunal's decision in Judgement No. 444, Tortel, and that pursuant to paragraph 16 of ST/IC/86/27, he should have been compensated and had his benefits and

seniority calculated at least as a GS-6 from the date of implementation of the reclassification of post No. NO2550, if not as a P-2 as his post should have been classified.

3. Direct that Applicant be assigned to a post commensurate with his skills and experience at the P-2 level.

4. Award Applicant two years' salary for the flagrant and extensive violation of his rights in altering documents relating to his classification appeal, classifying his post at an inappropriately low level, reassigning him to another post to eliminate his claim to tenure at a post entitled to a higher grade, denying him the right to present material relevant to his classification appeal and making misrepresentations to him, as in the letter of 25 March 1988, to deter him from taking prompts and vigorous action to vindicate his rights.

5. Award Applicant two years' salary for the wanton denial of administrative due process.

C. Oral Hearings

Pursuant to article 15 of the Tribunal's Rules, Applicant requests that oral hearings be held in order that the information requested ... above may be addressed and testimony may be taken from appropriate representatives of the Administration."

Whereas the Respondent filed his answer on 2 June 1992;

Whereas the Applicant filed written observations on 15 July 1992;

Whereas, on 29 October 1992, the Tribunal requested the Respondent to provide the Applicant "with the analysis by the Compensation and Classification Service referred to in each case as one of the elements considered by NYGSCARC [New York General Service Classification Appeals and Review Committee] in making its recommendations on the level of the posts";

Whereas, on the same date, the Tribunal put further questions to the Applicant and asked him "to advise the Tribunal

whether there is any further information that he ... wishes to be considered, which deals exclusively with the above analysis and the nature of the duties and responsibilities of the post, as set forth in the job descriptions to which that analysis was directed";

Whereas, on 3 November 1992, the Respondent submitted to the Tribunal the documentation requested and the Applicant, on 9 November 1992, provided his comments thereon, together with replies to the questions put by the Tribunal;

Whereas, on 20 November 1992, the Executive Secretary of the Tribunal informed the parties that the Tribunal had decided to adjourn consideration of the case until its 1993 Spring session;

Whereas the facts in the case are as follows:

Puran Chand Sharma entered the service of the United Nations on 24 March 1969, on a three month fixed-term appointment at the GS-1, step I level, as a Messenger in the Office of General Services. He served on further fixed-term appointments until 24 December 1969, when he was granted a probationary appointment. On 1 March 1971, his appointment became permanent and he was promoted to the GS-2 level, as an English Clerk at the United Nations Joint Staff Pension Fund Secretariat. The Applicant was promoted to the GS-3 level, with effect from 1 March 1972 and to the GS-4 level, with effect from 1 April 1976, when his functional title became Programmer Assistant. On 1 April 1980, the Applicant was promoted to the GS-5 level, as an Assistant Programmer.

In July 1982, the International Civil Service Commission approved the establishment of a seven-level grading structure (to replace the old five-level structure) for the General Service category in New York and promulgated job classification standards for the seven levels. As a result, all General Service posts in New York were classified under procedures set out in administrative instruction ST/AI/301 of 10 March 1983.

In accordance with the administrative instruction, a description of the post encumbered by the Applicant was prepared for initial classification and submitted to the Classification Service in December 1983.

On 13 June 1984, the Assistant Secretary-General, Office of Personnel Services (OPS) announced to the staff, in information circular ST/IC/84/45, the establishment of the Classification Review Group "to review the overall results of the classification exercise currently being undertaken in respect of posts in the General Service and related categories in New York". The Applicant's post was classified at the GS-6 level.

On 28 April 1986, the Assistant Secretary-General, OPS, informed the staff, in information circular ST/IC/86/27, "of the action taken with respect to the classification exercise for posts in the General Service ... categories at United Nations Headquarters and to outline future action, in particular with respect to the implementation of the results of the exercise and the related appeals procedure." NYGSCARC was established with effect from 16 May 1986, to hear appeals against the results of the classification exercise.

In a memorandum dated 5 June 1986, the Applicant appealed the initial classification of his post, stating: "... I submit that the functions in my job description more accurately reflect work done at a higher level. This is further substantiated by reference to the guidelines developped for my occupational group.

In particular, the percentages indicated corresponding to my duties were incorrectly stated by my supervisor who had inserted a separate sheet in the form P.270 without my knowledge or approval...". The Applicant attached a revised job description.

The Assistant Secretary-General for the Office of Human Resources Management (OHRM[1]), submitted the Applicant's case to NYGSCARC for advice on the basis of information circular ST/IC/86/27 Annex II, subparagraph 10(c). However, the procedure contained in subparagraph 10(b) of the information circular requiring review by the Classification Service, was not followed.

NYGSCARC reviewed the case and confirmed classification of the post at the GS-6 level. The Assistant Secretary-General, OHRM, approved this recommendation on 30 January 1987.

In a memorandum dated 19 November 1987, the Applicant asked the Secretary-General for a review of the classification of his post, pursuant to administrative instruction ST/AI/301 and staff rule 111.2. He argued that his supervisor had incorrectly changed the percentage of time spent on the duties in the job description, and that the functions were those performed at the Professional level rather than at the General Service level.

As the initial appeal had not been reviewed in accordance with the procedure specified in subparagraph 10(b) of annex II of information circular ST/IC/86/27, the case was resubmitted to NYGSCARC after the procedure had been corrected.

NYGSCARC reviewed the appeal at its fourth meeting on 1 March 1990. Its considerations and conclusions read as follows:

> "Based upon its review of the job description, the information provided by the appellant in his memoranda of appeal, the analysis provided by the Compensation and Classification Service which confirmed the initial classification decision, the Committee concluded that the functions of the post corresponded to the GS-6 level depicted in the General Service Classification Standards. The amendment to the job description affecting the percentages of time alloted to the duties of the post was not judged to have any grade impact, i.e., had the percentages not been amended, the correct grade

---

[1] Successor of OPS.

> would still be GS-6. Accordingly, the Committee recommends that the post be maintained at the GS-6 level in the Computer Programming Related occupation".

On 4 June 1990, the Assistant Secretary-General, OHRM, informed the Applicant that he had approved the recommendation by NYGSCARC.

On 14 September 1990, the Applicant sought the Secretary-General's agreement for direct submission of his appeal to the Administrative Tribunal.

On 27 September 1990, the Assistant Secretary-General, OHRM, informed the Executive Secretary of the Administrative Tribunal that:

> "Under the circumstances of this case, the Secretary-General is of the opinion that submission of the dispute to the New York General Service Classification and Review Committee satisfies the requirement that a dispute be submitted to 'the joint appeals body' set out in article 7, paragraph 1, of the Administrative Tribunal Statute.
>
> Alternatively, the Secretary-General would agree to the direct submission of [the Applicant's] appeal to the Administrative Tribunal."

On 16 May 1991, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant's post is improperly classified at a lower grade than its responsibilities merit.

2. The lack of preparation of proper performance evaluation reports and the Applicant's reassignment as an Administrative Assistant violated the Applicant's rights.

Whereas the Respondent's principal contentions are:

1. The Respondent's decision with regard to the classification of the Applicant's post was an exercise of discretion properly taken, following proper procedures, after an independent review by a specialized appeals body.

2. The Applicant's pleas relating to an alleged denial of a proper performance evaluation report and an alleged improper 1984 reassignment within the Secretariat of the United Nations Joint Staff the Pension Fund are irreceivable.

The Tribunal, having deliberated from 7 June to 29 June 1993, now pronounces the following judgement:

I. The Applicant's post was initially classified at the GS-6 level. The Applicant appealed against this classification. As a consequence, the New York General Service Classification Appeals and Review Committee (NYGSCARC) twice reviewed his appeal and finally decided to maintain the contested recommendation. The Respondent adopted the recommendation for classification of the post at the GS-6 level, by a decision dated 4 June 1990. On 14 September 1990, the Applicant requested consent for direct submission of his appeal to the Tribunal "since the JAB [Joint Appeals Board] refuses to receive it".

II. In his submission to the Tribunal, the Applicant claims that his post was wrongfully classified at the GS-6 level. He asserts that, together with his job description, his supervisor, without his knowledge, submitted an additional paper to the Compensation and Classification Service in which the percentage of "programming" in his job differed from the percentage shown in his job description. In the Applicant's view, this additional paper, by indicating that his percentage of "programming" was 30% instead of

60%, as it appeared in his job description, led NYGSCARC to deny his appeal. The Tribunal finds no need for oral proceedings in this case and rejects that plea.

III. The Applicant also claims that, in spite of the assurance of the Administration, in a memorandum dated 25 March 1988, he was never given the opportunity to make a submission to NYGSCARC and that his appeal was disposed of without giving any reasons. This, in the Applicant's view, was tantamount to a denial of due process.

IV. Before the Tribunal, the Applicant submits two new claims, i.e. that he was unlawfully reassigned to a new post on 3 December 1984 and that he has had no performance evaluation report for a number of years. Insofar as the Applicant did not timely initiate the appropriate recourse procedure regarding these matters, the Tribunal will not consider these claims. The Tribunal holds that only the Applicant's recourse against the classification of his post is properly before it.

V. The Applicant alleges that he was not given the possibility to properly state his case. In accordance with the Tribunal's decision in Judgement No. 541, Ibarria (1991), all the documentation considered by NYGSCARC when reviewing the Applicant's case should have been made available to the Applicant and he should have been given an opportunity to comment on it. This was not done. In order to cure this procedural flaw, the Tribunal ordered the Respondent on 5 November 1992, to make available to the Applicant all the documentation pertaining to his case, thus enabling him to submit any comments he deemed necessary. The Applicant did so on 9 November 1992.

VI. If from the Applicant's comments, it had appeared that there were material new facts that had not previously been known to him,

or significant new arguments that he had not previously been able to submit to NYGSCARC, a remand of the case would have been necessary. However, as these submissions contain no new facts or arguments with respect to the documentation transmitted to him by the Respondent, consisting merely of a repetition of his previous allegation that his post was wrongly classified, the Tribunal concludes that the procedural flaw referred to paragraph V above had no detrimental effect. Accordingly, the Tribunal holds that no remand is necessary.

VII. As the Tribunal held in Judgement No. 396, Waldegrave (1987), paragraph XV: "It is not for the Tribunal to substitute its judgement for that of the Secretary-General in classification matters". Therefore, the Tribunal will confine its task on this issue to ascertain whether the Applicant's contention that his job description had been altered was duly considered. The Tribunal finds that the Applicant's contention was duly considered and that the final decision was not arbitrary or unreasoned.

VIII. The Tribunal notes that the Respondent has not denied that the Applicant's job description that was before NYGSCARC had been supplemented by a paper in which the percentage of "programming" was brought down to 30%, and that this paper was not shown to the Applicant before the decision on his case was taken. The Tribunal views this as an irregularity on the part of the Administration.

IX. However, the Applicant was able to submit his argument on this point to the Compensation and Classification Service, as shown in its report to NYGSCARC of 26 May 1989. In this report, which was made available to the Applicant, as set forth above, several substantive reasons are given showing that the post was correctly classified at the GS-6 level, and that the difference between 60%

and 30% in programming was immaterial. The Tribunal therefore concludes that the irregularity involved in the alteration of the job description, without the staff member's knowledge, caused him no injury. Nevertheless, the Tribunal does not condone any irregularity of that nature, and urges that safeguards be taken against repetition.

X. For the foregoing reasons, the Tribunal rejects the Applicant's appeal against the classification of his post.

(Signatures)

Jerome ACKERMAN
President

Luis de POSADAS MONTERO
Vice-President

Hubert THIERRY
Member

Geneva, 29 June 1993

R. Mala VICIEN-MILBURN
Executive Secretary